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FAILURE TO PROPERLY SUPERVISE STUDENTS CAN LEAD TO EXPENSIVE LITIGATION

Public Schools Must Proactively Establish Policies & Procedures to Monitor Student Safety on Campus

The following is a summary of two recent cases addressing a school district's obligation to monitor student safety on campus.

In *Olvera v. Pajaro Valley Unified School District*, (Cal. Ct. App. 2007), Jorge Olvera, a fourth grader, sued the District when he sustained a broken leg during a fight with a fifth grader in the boy's bathroom on campus during recess. Jorge's suit was based on negligent supervision on the day of the bathroom incident and negligent failure to discipline the fifth grader for a prior assault; the suit alleged the District had a duty to discipline the fifth grader and a duty to protect Jorge.

The court stated that: "California law has long imposed on school authorities a duty to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection. ... Either a total lack of supervision or ineffective supervision may constitute a lack of ordinary care on the part of those responsible for student supervision."

The court found that District was not negligent in its supervision of the area where the fight/accident occurred. Four adults supervised the playground during lunch recess. Three yard duty personnel were each assigned to a zone and roamed within the zone to cover all areas where students might get into trouble. They moved around in an unpredictable, random fashion. In addition, the principal roamed the entire playground area in an unpredictable pattern. He walked into the boys' restroom a couple times each recess and the boys knew this. While the roaming meant that there would be times when no one was near the bathroom, it was random, so boys could not predict when they would be unsupervised. Further, the ratio of adults to students was 1:45, which is within the generally accepted ratio for elementary school supervision. Finally, there was no evidence of prior fights in the school restroom. As such, Jorge was unsuccessful in his claim against the District for negligent supervision and negligent failure to discipline the other student.

In *Luis M. v. Hayward Unified School District*, (Cal. App. Ct. 2007), Luis M. sued the District claiming that it was negligent in failing to provide adequate supervision of the hallway at his high school during the period between classes which resulted in Luis being attacked and injured in the hallway by a group of students.

The District presented no evidence to show what practices or policies it has established to monitor the hallways during recess and passing periods, nor what supervision, if any, was being provided when the altercation occurred. The implication of the evidence was that no campus supervisor, teacher, or other staff member was then present in the hallway to maintain orderly

conduct among the students. There were three campus supervisors, each of whom were in his or her office at the time of the incident, and had to be summoned by a teacher, who in turn did not learn of the fight until told of it by other students. Based upon this information the court will allow this matter to go to trial.

Recommendation: In the end, both of these cases stand for the proposition that public schools, including charter schools, must have **policies and procedures** actively in place and followed, in order to avoid claims of negligence when students are injured on campus due to fights or accidents. Public schools must make **reasonable efforts to supervise** students throughout the school day, and, at a minimum, should station school officials in hallways during passing times. And public schools should **engage in training** with its employees, contractors, or vendors about proper student supervision.

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If you should have any questions concerning these issues, please contact Jim Young (jyoung@smymlaw.com) or Janelle Ruley (jruley@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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